



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1995

Mr. Donald E. Lindsay
Henslee, Ryan & Groce, P.C.
Great Hills Plaza
9600 Great Hills Trail
Suite 300 West
Austin, Texas 78759-6303

OR95-1093

Dear Mr. Lindsay:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 16244.

The Hamshire-Fannett Independent School District (the "school district") received an open records request for access to an audio recording made of an executive session meeting of the school district's board of trustees.¹ You inform us that the requestor is a member of the district's board of trustees who explicitly excluded himself from participating in the executive session. You inform us that the requestor did not attend the meeting or participate in any manner in the session. You state that the audio recording requested is equivalent to a certified agenda that the board of trustees must make when meeting in a closed session pursuant to section 551.103(a) of the Government Code. See Attorney General Opinion JM-1071 (1989) at 2; Open Records Decision No. 495 (1988) at 3 n.1. You contend that the audio recording must be withheld from the requestor pursuant to section 551.104 of the Government Code.

Section 551.104 provides that a governmental body shall preserve the audio recording of a closed meeting for at least two years. Gov't Code § 551.104(a). A certified agenda or audio recording of a closed meeting may be made available for public inspection only pursuant to a court order as described in section 551.104(b)(3) of the Government Code. This office previously determined that a board member who had attended a closed session could review the audio recording of the closed meeting.

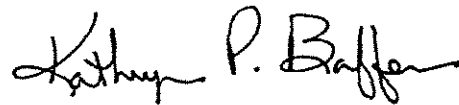
¹Though you refer to the meeting at issue as an executive session, we assume that the meeting was a closed meeting as described by sections 551.101 through 551.104 of the Government Code.

Attorney General Opinion DM-227 (1993). This office determined that an attending board member's review of the audio recording from the closed meeting did not constitute a release of the information to the public. *Id.* Since the purpose of the governmental body's duty to preserve the audio recording is so that it can use the recording as evidence in the event litigation ensues, this office has determined that a governmental body is authorized to decide whether to permit a member of the board who participated in the closed meeting to review the recording of that meeting as well as set the procedure for allowing such a review. *Id.*

In this instance, the requestor seeking to review the audio recording is a board member. Consequently, should you decide to release the audio tape to the requestor, such a release would not constitute a release to the public, and would not be prohibited by chapter 552 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Kathryn P. Baffes".

Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

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